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TRANSMITTAL

Appellant : Low et al.
Appl. No. : 10/009,575
Filed : August 6, 2002
For : MESSAGE PROCESSING
SYSTEM
Examiner : J. M. Corrielus
Group Art Unit : 2162

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant : Low et al.
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John M. Carson, Reg. No. 34,303

ON APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES
APPEAL BRIEF

Mail Stop Appeal Brief -- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief relates to an appeal to the Board of Patent Appeals and Interferences of the final rejection set forth in a final Office Action mailed June 30, 2005, and an Advisory Action mailed on November 21, 2005, in the above-captioned application.

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I. REAL PARTY IN INTEREST

The real party in interest in this appeal is Sydney Gordon Low and William Dennis Lang.

II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any related appeals or interferences.

III. STATUS OF THE CLAIMS

The application was originally filed with Claims 1-18 on November 9, 2001. A preliminary amendment for cancelling Claims 1-18 and adding new claims 19-36 was concurrently filed with the application. In response to a second Office Action mailed on March 7, 2004, Claims 19, 29 and 36 were amended. In response to a third Office Action mailed on January 4, 2005, Claims 19, 29-30 and 36 were amended.

In a fourth and Final Office Action mailed on June 30, 2005, the Examiner finally rejected Claims 19-36. The Examiner stated that the amended claim term “providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing” is unsupported by objective factual evidence. *Final Office Action at page 13, lines 6-11.* Appellant provided adequate support for the claim amendment in reply to the final Office Action submitted on October 18, 2005, citing the specification at page 4, line 29 through page 5, line 8, and Figure 2. *See Appellant’s response to Final Office Action at page 2, second paragraph.* No claim amendments were made in response to the final Office Action. Appellant also argued in the final Office Action response that cited portions of a main prior art reference are not in fact prior art.

An Advisory Action was mailed on November 21, 2005, in which the Examiner repeated the previous claim rejections and did not address Appellant’s arguments that the cited portions are not prior art.

IV. STATUS OF AMENDMENTS

Claims 19-36 appear before the Board as they were finally rejected, and the claims are attached hereto as Appendix A.

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V. SUMMARY OF CLAIMED SUBJECT MATTER

As described in the application as filed, embodiments of the invention include message processing methods and systems which provide a useful alternative or allows management of unsolicited messages without seeking to simply restrict or filter incoming messages. *See Application at p. 1, l. 21 through p. 2, l. 13.*

Claim 19 recites a method of handling messages. The method comprises determining if a message is approved for a recipient of the message. *See Application at p. 3, ll. 16-17; Figure 2.* The method also comprises processing the message for subsequent viewing by the recipient if the message is approved. *See Application at p. 3, ll. 20-25; Figure 2.* Additionally, the method includes notifying the recipient and storing the message, if the message is unapproved. *See Application at p. 3, ll. 27-28; p. 3, l. 30 through p. 4, l. 4; p. 5, ll. 3-4; Figure 2.* The method further includes providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing. *See Application at p. 4, l. 29 through p. 5, l. 8; Figure 2.*

Claim 29 recites a message processing system. The system comprises means for determining if a message is approved for a recipient of the message. *See Application at p. 2, ll. 25-28; p. 3, ll. 15-17; Figures 1 and 2.* The system also comprises means for processing the message for subsequent viewing by the recipient if the message is approved. *See Application at p. 2, ll. 25-28; p. 3, ll. 15-16; p. 3, ll. 20-25; Figures 1 and 2.* Additionally, the system includes means for notifying the recipient and storing the message, if the message is unapproved. *See Application at p. 2, ll. 25-28; p. 3, ll. 15-16; p. 3, ll. 27-28; p. 3, l. 30 through p. 4, l. 4; p. 5, ll. 3-4; Figures 1 and 2.* The system further includes means for providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing. *See Application at p. 2, ll. 25-28; p. 3, ll. 15-16; p. 4, l. 29 through p. 5, l. 8; Figures 1 and 2.*

Claim 30 recites a message processing system. The system comprises an electronic message server for receiving and storing electronic messages for a recipient. *See Application at p. 2, ll. 22-25; p. 3, ll. 15-16; p. 3, ll. 22-23; Figures 1 and 2.* The system also comprises an electronic message manager for processing electronic messages for a recipient to determine if the electronic messages are approved based on stored criteria, sending approved electronic messages for the recipient to a location for access by the recipient, and storing and sending a notification to

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the recipient of unapproved messages, and providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing. *See Application at p. 2, ll. 25-28; p. 3, ll. 15-25; p. 3, l. 27 through p. 4, l. 4; p. 4, l. 29 through p. 5, l. 8; Figures 1 and 2.*

Claim 36 recites a computer readable storage medium having code for executing a method of handling messages method of handling messages. The method comprises determining if a message is approved for a recipient of the message. *See Application at p. 3, ll. 16-17; Figure 2.* The method also comprises processing the message for subsequent viewing by the recipient if the message is approved. *See Application at p. 3, ll. 20-25; Figure 2.* Additionally, the method includes notifying the recipient and storing the message, if the message is unapproved. *See Application at p. 3, ll. 27-28; p. 3, l. 30 through p. 4, l. 4; p. 5, ll. 3-4; Figure 2.* The method further includes providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing. *See Application at p. 4, l. 29 through p. 5, l. 8; Figure 2.*

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

This Appeal turns on the following issues:

Claims 19-36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,480,885 to Olivier in view of U.S. Patent. No. 6,324,596 to Ogilvie et al.

VII. APPELLANT'S ARGUMENT

A. Claims 19-36 are Patentable over Olivier, in view of Ogilvie

1. The Examiner's Grounds for Rejection

a. Claims 19 and 36

Regarding Claims 19 and 36, the Examiner stated that "Olivier discloses an analogous system that enables users to exchange group electronic mail by establishing profiles and criteria for determining personalized subsets within a group by comparing the identified appearing on the allowed list to determine whether each designated recipient is on the list for the intended

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recipient that stored on the database of the e-mail manager (col. 17, lines 7-12).” *Final Office Action at page 3, lines 1-5*. The Examiner further stated that “In particular, Olivier stated that if the message is not approved, the sender is notified by the system (col. 14, line 56 through col. 15, line 15).” *Final Office Action at page 3, lines 5-6*.

Recognizing a deficiency in Olivier, the Examiner conceded that “Olivier does not explicitly disclose the use of notifying the recipient if a message is unapproved.” *Final Office Action at page 3, lines 6-7*. Instead, the Examiner relied on Ogilvie, stating that it “discloses the claimed feature “notifying the recipient if a message is unapproved” as a means of providing the recipient with the capability to manage unsolicited email messages without the messages inadvertently removed by a message filter, and also requesting to remove from the mailing list (col. 1, lines 55-64; col. 14, lines 26-39).” *Final Office Action at page 3, line 20 through page 4, line 1*.

The Examiner further stated that “Ogilvie has shown that it is old and well known to “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing” (col. 1, lines 45-65; col. 2, lines 1-7; col. 7, lines 4-22; col. 8, lines 2-11).” *Final Office Action at page 4, lines 8-11*.

The Examiner further stated that “Ogilvie further discloses the claimed features “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing” by allowing recipient to overwrite the self-removing message after the unapproved being read, so the recipient has option to manually delete the unapproved message by moving it from the inbox to the trash folder (col. 9, lines 59-66).” *Final Office Action at page 4, lines 11-16*.

The Examiner concludes that “it would have been obvious to one of ordinary skill in the art of data processing, at the time of the invention was made to combine the teachings of the cited references, wherein the message distribution provided therein (See Olivier’s fig. 10 (2)) would incorporate the use of notifying the recipient if the message is unapproved (unsolicited), in the same conventional manner as disclosed by Ogilvie (col. 1, lines 55-64; col. 13, lines 1-5; col. 14, lines 28-39; col. 9, lines 59-66).” *Final Office Action at page 4, lines 16-21*.

The Examiner further stated that “One having ordinary skill in the art would have been motivated to utilize such a combination would provide Olivier’s system the enhanced capability of managing unsolicited email messages without the messages inadvertently removed by a

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message filter, thereby providing users the option to delete the email message after viewing.”
Final Office Action at page 4, line 22 through page 5, line 3.

b. Claim 29

The Examiner also rejected Claim 29, repeating the assertions made with regard to Claims 19 and 36. *Final Office Action at page 7, last para. through page 8, line 1; page 8, lines 14-17; page 9, lines 2-19.*

c. Claim 30

The Examiner further rejected Claim 30, repeating the assertions made with regard to Claims 19 and 36. *Final Office Action at page 10, lines 1-6 and 9-11; page 11, lines 1-5; page 11, line 11 through page 12, line 6.*

2. The Legal Standard

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, and the prior art references, when combined, must teach or suggest all the claim limitations. M.P.E.P. § 2143 (emphasis added). Also, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Appellant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). If a proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the claims are not sufficient to render the claims *prima facie* obvious. MPEP 2343.01; *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Moreover, if a proposed modification would render the prior art unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *Id.*, *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

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3. The Combination of Olivier and Ogilvie Fails to Show the Features of “providing the recipient with an option ...” as Recited in Independent Claims 19, 29-30 and 36

Each of independent Claims 19, 29-30 and 36 recites, among other things, “providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing.” Appellant respectfully submits that neither Olivier nor Ogilvie, having prior art status in pertinent part, teaches or suggests the above-recited features.

a. The Portions of Ogilvie Cited by the Examiner Are Not in Fact Prior Art

The Examiner asserted, citing four passages of Ogilvie (col. 1, lines 45-65; col. 2, lines 1-7; col. 7, lines 4-22; and col. 8, lines 2-11), that it is old and well known to “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing.” *Final Office Action at page 4, lines 8-11; page 9, lines 2-5; page 11, lines 11-15.* However, Appellant respectfully submits that the above passages were not disclosed in the parent applications of Ogilvie which antedate this application’s priority date of May 12, 1999 as discussed below.

i) With Regard to Column 1, lines 45-65

The passage states that “Some email systems provide filters that detect at least some incoming unsolicited email and either deletes it or, more typically, places it in a directory or folder reserved for such messages. But filters sometimes err, either by characterizing as unsolicited email a message that is not, or by failing to detect unsolicited email and letting it through with the normal correspondence from familiar senders...removed from the list.” However, the above cited passage is not included in the provisional application (Application No. 60/101,517) filed September 23, 1998. Furthermore, this passage is not included in the provisional application (Application No. 60/104,138) filed October 14, 1998. The passage was first introduced in the application (Application No. 09/399,066) filed September 18, 1999 which is AFTER the priority date of this application (May 12, 1999).

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ii) With Regard to Column 2, lines 1-7

The passage states “the fact that a recipient has voluntarily subscribed...subscription service.” However, none of the parent applications of Ogilvie (Applications Nos. 60/101,517, 60/104,138 and 09/399,066) teach the above-indicated passage. This passage was first disclosed in the Ogilvie patent filed July 18, 2000 which is AFTER the priority date of this application (May 12, 1999).

iii) With Regard to Column 7, lines 4-22

The passage states “Note that conventional options for handling attachments may be combined with the removal indicators 210. For instance, conventional email clients such as the Eudora Pro 3.0 program permit one to specify...deleted.” However, none of the priority applications of Ogilvie (Applications Nos. 60/101,517, 60/104,138 and 09/399,066) teach the above-indicated passage. This passage first appears in the Ogilvie patent filed July 18, 2000 which is AFTER the priority date of this application (May 12, 1999).

iv) With Regard to Column 8, lines 2-11

The passage states “In conventional email systems, by contrast, recipients are burdened with removing essentially all unwanted messages... attend to its disposal.” However, neither of the priority applications of Ogilvie (Applications Nos. 60/101,517 and 60/104,138) teaches the above-indicated passage. This passage first appears in the parent application (Application No. 09/399,066) of Ogilvie filed July 18, 2000, which is AFTER the priority date of this application (May 12, 1999).

v) Summary

As discussed above, the passages that the Examiner has cited are not prior art under 35 U.S.C. §§ 102 and 103 with respect to the claimed invention. Thus, Appellant respectfully submits that it is not old and not well known to “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing” in view of Ogilvie.

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b. Ogilvie Neither Teaches Nor Suggests “providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing”

Ogilvie is directed to automatic deletion of an undesirable message in order to reduce a recipient's burden to manually delete spam mails. *See col. 2, lines 32-45.* Ogilvie further states that:

During a creating step 204 the originator 200 creates a self-removing message 206 using software and hardware configured by the software, or using custom hardware alone, according to the teachings herein. This may be done generally in accordance with familiar tools and techniques for email messaging, attaching files, embedding graphics, encrypting data, and/or compressing data, but it must associate code and/or hardware 208, and/or indicators 210, with the message 206 to perform or facilitate the self-removal message management functions described here. That is, the originator 200 (or equivalently, an embodiment under the originator's direction) marks the message 206 at the origin, includes removal code 208 in the message 206, or does both.

See col. 5, lines 6-18 of Ogilvie

In order to automatically delete an unapproved message (its intended function), Ogilvie is required to use a self-removal indicator (or code). *See also col. 14, lines 31-32 of Ogilvie.* Thus, the Ogilvie patent cannot, and does not, teach or suggest “providing the recipient with an option to view the unapproved message and selectively delete the message, *without using a self-removing message indicator, after viewing*” recited in independent Claims 19, 29-30 and 36.

The Examiner asserted, citing column 9, lines 59-66, that Ogilvie teaches “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing” by allowing a recipient to overwrite the self-removing message after the unapproved being read, so the recipient has an option to manually delete the unapproved message by moving it from the inbox to the trash folder. *Final Office Action at page 4, lines 11-16; page 9, lines 5-10; page 11, lines 15-19.* Appellant respectfully disagrees. Furthermore, Appellant reserves the right to challenge whether the cited portion is disclosed in the provisional applications (Application No. 60/101,517 filed September 23, 1998 and Application No. 60/104,138 filed October 14, 1998), which antedate the priority date (May 12, 1999) of the claimed invention.

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The cited portion describes a message removing step (234) where a message (206), including a self-removal indicator (210), is removed at the client's browser. This removing step (234) is performed based on the message (206) including a self-removal indicator (210). See also *Figure 2*. That is, the message (206) is required to include the self-removal indicator (210) to perform the removing step (234). In view of the above, Appellant respectfully submits that this cited passage does not teach "provide the recipient with an option to view the unapproved message and selectively delete the message, *without using a self-removing message indicator, after viewing*" since the claimed invention does not use a self-removing message indicator so as to delete an unapproved message.

c. Olivier Neither Teaches Nor Suggests "providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing"

Olivier is concerned with managing a subscription mailing list and improvements to that process. See *col. 3, lines 35-60*. Olivier further states that:

If the message isn't approved or rejected after 5 days or another period of time, it is removed from the database and returned to the sender. If a moderator approves the message, it is then sent to the distribution list. If it is rejected, the sender is informed via email. In either case the message is then removed from the suspended messages table.

See col. 15, lines 9-15 of Olivier

In Olivier, if a message is unapproved or rejected, the sender, not the recipient, is notified. The recipient is not notified about the unapproval of the message. Furthermore, such a rejected message is not sent to the recipient. The Examiner has acknowledged as such in the final Office Action. *Final Office Action at page 3, lines 6-7; page 7, line 22 (last line) through page 8, line 1; page 10, lines 10-11*.

Thus, Appellant respectfully submits that Olivier cannot, and does not, teach or suggest "providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing" recited in independent Claims 19, 29-30 and 36.

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The Examiner asserts, citing col. 16, lines 25-62, that “Such teaching of Olivier has the functional limitation of sending a notification to the recipient when a message is unapproved with respect to the message criteria data set by the sender. Once the notification is set by Olivier in the message criteria data, the recipient will automatically receives an acknowledgement as to whether a message is approved or not.” *Final Office Action at page 3, lines 13-17; page 8, lines 7-11; page 10, lines 16-20.*

Appellant respectfully disagrees. Appellant respectfully submits that Olivier does not describe any functionality that notifies the recipient in the cited portion. Unapproved in the context of Olivier is simply a message that does not match the subscriber’s profile. Indeed the recipient-subscriber does not receive anything. The intent and function of Olivier is to only receive messages that match the subscribers criteria. Ipso facto, messages that do not match the criteria are not received by the subscriber/recipient because these are not wanted by the subscriber/recipient. Appellant respectfully submits that in a mailing list environment as in Olivier, there would be no point in notifying the recipient of messages that do not match their criteria.

In view of the above, Appellant respectfully submits that Olivier neither teaches nor suggests “providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing” recited in independent Claims 19, 29-30 and 36.

d. There is No Motivation or Suggestion to Modify Prior Art References to Arrive at the Claimed Invention

Appellant respectfully submits that there is no motivation or suggestion to modify the Ogilvie system to arrive at the claimed invention. As discussed above, in order to perform its intended function, the Ogilvie system must include a self-removal indicator or code in an email message to be transmitted. If the Ogilvie system were modified to delete a self-removal indicator or code from the email message, such modification would render the Ogilvie device inoperable for its intended purpose because an unapproved message would not be automatically deleted at a recipient’s computer. *MPEP 2143.01.*

Furthermore, Appellant respectfully submits that there is no motivation or suggestion to modify the Olivier system to arrive at the claimed invention. As discussed above, in a mailing

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list environment such as in Olivier, there is no point or need to “notify recipients of emails that are unapproved and store such emails” let alone “provide the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing.” Thus, a skilled person would not have been motivated to modify the Olivier system as in the claimed invention.

In view of the above, Appellant respectfully submits that there is no motivation or suggestion to modify the Ogilvie and Olivier systems to arrive at the claimed invention.

e. Summary

As discussed above, neither Olivier nor Ogilvie teaches or suggests “providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing” recited in independent Claims 19, 29-30 and 36. Furthermore, there is no motivation or suggestion to modify the prior art references to arrive at the claimed invention. In view of the above, independent Claims 19, 29-30 and 36 are allowable over the prior art of record. Claims 20-28 and 31-35 depend from base Claim 19 or 30, and further define additional technical features of the present invention. In view of the patentability of their base claims, and in further view of their additional technical features, Appellant respectfully submits that the dependent claims are patentable over the prior art of record.

B. Conclusion

In view of the foregoing arguments, Appellant respectfully submits that Claims 19-36 are patentable over the prior art of record.

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VIII. APPENDICES

Attached hereto as Appendix A is a copy of finally rejected Claims 19-36 in the present case. Also attached is Appendix B for inclusion of evidence and indicating no evidence is included, and Appendix C for inclusion of information regarding related proceedings and indicating no information regarding related proceedings is included.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

A handwritten signature in black ink, appearing to be "John M. Carson", is written over a horizontal line. The signature is stylized with a large loop and a crossbar.

Dated: February 28, 2006

By: _____

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APPENDIX A: CLAIMS
(Claims as finally rejected)

- 1-18. (Cancelled)
19. A method of handling messages, comprising:
determining if a message is approved for a recipient of the message;
processing the message for subsequent viewing by the recipient if the message is approved;
notifying the recipient and storing the message, if the message is unapproved; and
providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing.
20. The method of Claim 19, further comprising allowing the recipient to view an unapproved message.
21. The method of Claim 20, further comprising notifying the recipient with a notification message having a link to network data representing a list of unapproved messages for the recipient.
22. The method of Claim 21, wherein the network data comprises markup language data accessible by a computer device of the recipient.
23. The method of Claim 19, further comprising allowing the recipient to set criteria to determine if the message is approved.
24. The method of Claim 23, wherein the criteria includes a sender of the message being on a stored approved list for the recipient.
25. The method of Claim 24, further comprising allowing the recipient to change the criteria.

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26. The method of Claim 19, further comprising deleting an unapproved message a predetermined period of time after the notifying.

27. The method of Claim 26, further comprising notifying a sender of the unapproved message of deletion of the unapproved message.

28. The method of Claim 23, wherein the messages and the criteria are stored on an electronic message server.

29. A message processing system, comprising:
means for determining if a message is approved for a recipient of the message;
means for processing the message for subsequent viewing by the recipient if the message is approved;
means for notifying the recipient and storing the message, if the message is unapproved; and
means for providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing.

30. A message processing system, comprising:
an electronic message server for receiving and storing electronic messages for a recipient; and
an electronic message manager for processing electronic messages for a recipient to determine if the electronic messages are approved based on stored criteria, sending approved electronic messages for the recipient to a location for access by the recipient, and storing and sending a notification to the recipient of unapproved messages, and providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing.

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31. The message processing system of Claim 30, further comprising an access server for generating a display page with a list of unapproved messages, the notification comprising an electronic message with a link to the display page.

32. The message processing system of Claim 31, wherein the list of unapproved messages includes links to the unapproved messages respectively and which on selection causes transmission of an unapproved message to a recipient's computer device for viewing by the recipient.

33. The message processing system of Claim 32, wherein the criteria includes the sender of a message being on an approved list for the recipient stored on the system.

34. The message processing system of Claim 33, wherein the display page includes a link to at least one display page for displaying and changing the criteria.

35. The message processing system of Claim 33, wherein the display page includes a link for changing the criteria.

36. A computer readable storage medium having code for executing a method of handling messages, the method comprising:

determining if a message is approved for a recipient of the message;

processing the message for subsequent viewing by the recipient if the message is approved;

notifying the recipient and storing the message, if the message is unapproved; and

providing the recipient with an option to view the unapproved message and selectively delete the message, without using a self-removing message indicator, after viewing.

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APPENDIX B: EVIDENCE

None

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APPENDIX C: RELATED PROCEEDINGS

None

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